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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/665,899	09/20/2000	Masayoshi Iwase	10517/74	6300
23838	7590	01/25/2006	EXAMINER	
KENYON & KENYON LLP 1500 K STREET N.W. SUITE 700 WASHINGTON, DC 20005			MERCADO, JULIAN A	
			ART UNIT	PAPER NUMBER
			1745	

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/665,899	<b>Applicant(s)</b> IWASE ET AL.	
	<b>Examiner</b> Julian Mercado	<b>Art Unit</b> 1745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11-14-05.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,7,8,10-12,14-16,18,20,22,24,26 and 28-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 11,12,14,20,22,24,26,28-31 and 33-35 is/are allowed.
- 6) ☒ Claim(s) 1,3-5,7,8,10,15,16,18 and 32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7-23-04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 14, 2005 has been entered.

Claims 1, 3-5, 7, 8, 10-12, 14-16, 18, 20, 22, 24, 26, 28-35 are pending, of which claim 35 is newly submitted.

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on July 23, 2004 has been considered by the examiner; documents "F" and "H-N" have been reviewed from the parent application. Please note that the documents presently lined-through have been initialed off on October 25, 2004 and a copy of the IDS indicating consideration of those documents was previously sent on November 1, 2004. The lined-through documents are to avoid duplication of citations upon allowance of the application.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 1, 3-5, 7, 8, 10, 15, 16, 18 and 32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "gas supply inlets" in line 12. There is insufficient antecedent basis for this limitation in the claim insofar as line 10 only provides antecedence for a single gas supply inlet.

Claim 1 recites the limitation "the gas supply inlet" in lines 13-14. To the extent that a plurality of gas supply inlets are recited in the claim, it is unclear which one of the plurality of gas supply inlets is referred to by this limitation.

Claims 3-5, 7, 8, 10, 15, 16, 18 and 32 are rejected under 35 U.S.C. 112, second paragraph, as being dependent upon a rejected base claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-5, 7, 8, 10, 15, 16, 18 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Dews et al. (U.S. Pat 3,801,374)

The rejection is maintained for the reasons of record. Notwithstanding the 35 U.S.C. 112, second paragraph rejection (discussed above), the examiner notes that applicant's amendment recites that the gas supply inlets of separators of adjacent unit cells of the fuel cell

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communicate with each other to channel the gas. To this extent, while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) Thus, Dews et al. is maintained to teach this feature insofar as gas supply inlets [28] and [34] are poised in separators of adjacent cells. The claimed gas supply inlets which communicate with each other has not been given patentable weight, as such language is construed as a statement of intended use which does not further limit the claim to a particular structure. Thus, this portion of the amendment to the present claims is not considered to further limit the scope of the claims.

Applicant's citation of page 22 lines 1-6 of the specification is acknowledged. The examiner also notes that page 28 lines 13-26 provide additional support for the present amendment. Applicant's arguments for patentability over the prior art appear to be premised on the claimed gas supply inlets communicating with each other via "passages for supplying and exhausting... in the direction of lamination," as disclosed in the cited portions of the specification. At present, however, the functional language do not impart this structural interpretation into the scope of the claims.

#### ***Allowable Subject Matter***

Claims 11, 12, 14, 20, 22, 24, 26 and 28-31 are allowed for the reasons already of record.

Claims 33-35 are allowed. With respect to claims 33 and 34, the following is an examiner's statement of reasons for allowance: the prior art of record does not teach or suggest the instant invention regarding the number of projections arranged in each of a plurality of

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regions successively decreasing across at least three regions. Claim 35 is allowed in view of its dependency from allowed claim 11.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

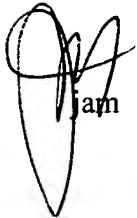
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian Mercado whose telephone number is (571) 272-1289. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan, can be reached on (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

A handwritten signature in black ink, appearing to be "J. Ryan", written over a circular stamp.A handwritten signature in black ink, appearing to be "Patrick Joseph Ryan", written above the printed name.

**PATRICK JOSEPH RYAN**  
**SUPERVISORY PATENT EXAMINER**